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## RESEARCH ARTICLE

### Threats to Academic Freedom in Venezuela: Legislative Impositions and Patterns of Discrimination Towards University Teachers and Students

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## ABSTRACT

*As democracy is weakened and economic and social conditions deteriorate, there are increasing threats to academic freedom and autonomy in Venezuelan universities. Although academic freedom and university autonomy are legally and constitutionally recognized, public policies and 'new legislation' undermine them. Military and paramilitary forces violently repress student protests. Frequently, students are arbitrarily detained, physically attacked, and psychologically pressured through interrogations about their political views and their supposed "plans to destabilize the government". A parallel system of non-autonomous universities has been created under a pensée unique established by the Socialist Plans of the Nation. Discrimination has increased, both in autonomous and non-autonomous universities. This paper will expose the legal and political policies undermining academic freedom in Venezuela under the governments of former president Hugo Chávez and current president Nicolás Maduro. Patterns of attacks against autonomous universities by police and military forces, as well as cases of political discrimination are described.*

KEYWORDS: Academic Freedom, University Autonomy, Venezuela.

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## 1. Introduction

Research on academic freedom and university autonomy in Venezuela, carried out from a historical point of view, has highlighted repeated government threats to universities [...]. According to Leonardo Carvajal, autocratic governments in Venezuela during the nineteenth century directly appointed university rectors and professors (Carvajal 2011). During the twentieth century, dictatorships sent students and professors to prison (Carvajal 2011). And, in the twenty-first century, an authoritarian government aims to extend its political control by imposing its ideological dogmas on the curricula of Venezuelan universities. Graciela Soriano has examined the situation of university autonomy from the creation of the first Venezuelan universities at the beginning of the 18th century until 2004, pointing out the oppression suffered by universities between 1868 and 1883 under the Guzman Blanco presidency; between 1912 and 1928 under Juan Vicente Gómez's dictatorship; and during Marcos Pérez Jiménez's dictatorship in the second half of the 20th century (Soriano 2005). Luis Ugalde has identified governmental strategies for controlling universities in Venezuela as of 2004 (Ugalde 2011). Manuel Rachadell has explained the way in which the Organic Law of Education passed in 2009 violates university autonomy and constitutional dispositions related to educational rights. He also examined judicial interferences in the election of university authorities with the aim of controlling them (Rachadell 2013). Orlando Albornoz has published books and articles for English audiences that touch on autonomy and academic freedom from sociological, historical, and anthropological perspectives, pointing out [...] the loss of ability and talent, and viewing as its causes, among others, the populist and demagogic policies of this century's governments (Albornoz 1998, 2005, 2011, 2012).

Recently, several articles published in journals on higher education have highlighted the deteriorating conditions of academic freedom and university autonomy in Venezuela. In a July 2017 interview, Claudio Bifano, professor at Universidad Central de Venezuela, stated: "While the government has created new universities in its own ideological image, the traditional autonomous institutions suffer severe financial restrictions and legal constraints imposed by people who do not rec-

ognize the importance of research and higher education” (Times Higher Education 2017)<sup>1</sup>. In 2015, Benjamin Scharifker and Angelina Jaffe warned that “government policies were creating a man-made disaster with the potential to affect for generations the quality of the country’s higher education system and the lives of its scholars, students, and society” (Scholars at Risk 2015).<sup>2</sup>

This article reflects, from a human rights perspective, the state of Venezuelan universities from 2003 to the present while president Chávez’s policies have been undermining academic freedom and university autonomy. Empirical evidence taken from the human rights organization database<sup>3</sup>, as well as documentary sources, are used in this research.

The article contributes to discussions concerning the erosion of academic freedom in Venezuela, particularly in the last 15 years, during the Chávez and Maduro governments, in the hope that it may encourage further research.

## **2. Venezuelan Social, Political and Economic Context: 1999-2017**

Once Hugo Chávez became president in 1999, his governmental program aimed for the political inclusion of marginalized groups traditionally excluded by poverty and a low political participation. The Bolivarian Socialist credo presented itself as the only path for the inclusion of marginalized groups. The process of inclusion of the poor went together with the process of political indoctrination and intolerance of dissent.

In 2010, President Hugo Chávez presented the *dot and circle* theory, intended to territorialize [...] actions and make them effective by creating clearly defined geographical spaces for efficient management of communities. Communities were supposedly given the power to develop strategies, under the guidance of communal

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<sup>1</sup> See: <https://www.timeshighereducation.com/news/higher-education-under-siege-venezuela>.

<sup>2</sup> See: <https://www.scholarsatrisk.org/resources/academic-freedom-under-threat-in-venezuela>.

<sup>3</sup> Human Rights Observatory of the University of Los Andes; Human Rights Commission of Faculty of Law and Political Science, Zulia University; and NGO Aula Abierta Venezuela databases.

leaders<sup>4</sup> aligned with the government, in order to spread official values and propaganda, promising people the “greatest amount of happiness”.

These communities were organized in areas where poor people lived and were responsible for disseminating Chávez's ideology, creating *fronts for the defense of the Bolivarian revolution against external and internal aggressions*. The Ministry of Popular Power for Communication and Information said in 2015 that the “economic war; the psychological operations for popular demobilization; the Obama Decree, and [...] Yankee imperialism” (MPPCI 2015) were among the aggressions against the Bolivarian revolution.

The *dot and circle* theory articulates a socialist model of production, implementing new productive relations and the creation of productive micro-units composing the desired communal state for the alleged purpose of satisfying collective needs, not individual needs as capitalism does. According to this credo, competitiveness is replaced by solidarity, wealth is distributed fairly and traditionally excluded people are given power. According to Rodríguez, there were five axes for the birth of the new Republic formulated by President Hugo Chávez in the dot and circle theory: 1. [...] Political axis for *participatory and protagonist* democracy; 2. [...] Economic axis for a productive and self-sustaining economy based on solidarity values; 3. [...] Social axis for promoting education and justice; 4. [...] Territorial axis for proportional settlement of the national territory; and, 5. [...] International axis to strengthen sovereignty and integration with the rest of Latin America and other Third World countries (Rodríguez 2010).

These five axes required the assignment of high-ranking military personnel to key positions such as ministries, embassies and, particularly, [...] state companies and businesses, to buy their support of the government. Civilians were, in general, excluded from the Bolivarian revolutionary process. Critical and political dissent was thus silenced more and more as it was considered a threat to the governmental discourse.

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<sup>4</sup> “*Comrades*” whose personal profile would indicate their level of patriotic commitment to the ideology of the ruling party.

In 2005, by the end of Chávez' first presidential term, the 1998 electoral promises were not on the way to realization. Political improvisation and ideological radicalism increased after the oil strikes of 2002-2003.

With the reelection of Chávez for a second period, the economic sector was taken over by the State and countless private companies<sup>5</sup> were illegally expropriated. Access to and exchange of foreign currency was restricted<sup>6</sup> resulting in the decline of domestic production and the increased importations of goods.

The *fronts for the defense of the Bolivarian revolution against external and internal aggressions* were subject to government blackmail and manipulation because they received money in exchange for political support and electoral duties<sup>7</sup> (Machado 2009). As the economic situation deteriorated, the government created more organizations to provide for the people's needs. It was a way of applying political manipulation. Nowadays, some of these organizations even manage to distribute food and medicine though they discriminate towards people that do not support the government. Instead of conforming to democratic values and fulfilling community requirements, these organizations have become mechanisms for oppression, violence, discrimination, and corruption, subjecting Venezuelans to inhuman conditions and continuous confrontation.

In this context, President Chávez promoted, in 2003, the creation of non-autonomous university institutions, in an attempt to impose a sole political way of thought for the consolidation of [...] so-called "socialism of the XXI century". The new university became, rather than a scenario for the free discussion of ideas, a

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<sup>5</sup> Today, most expropriated private enterprises report heavy losses, while some do not even work. Others have been absorbed by other enterprises in an attempt to keep the payroll without being productive.

<sup>6</sup> Several systems have been created for the allocation of foreign exchange, but so far none have had positive effects on the economic apparatus. On the contrary, they restrict domestic entrepreneurs.

<sup>7</sup> For example, in January 2009, the national newspaper, *El Nacional*, stated that the Minister of Popular Power for Participation and Social Protection said, regarding the consultative referendum to reform the Constitution, that: "Each communal council is a committee for the 'yes' to a constitutional reform. It is an organ of the power. All organizations must fight for approval of the constitutional reform. Ground committees, energy tables, telecommunication tables are committees for the yes (...) It should be understood as a political task; we must leave aside any other project and fight. None of the problems we are going to solve in the community can be dealt without using force." (El Nacional 2009).

mechanism of state educational control for youth indoctrination. The creation of non-autonomous universities meant that autonomous academies of higher education were gradually subjected to budget restrictions, leading to technical closures where they were unable to afford operative expenses.

The political program of current president Nicolás Maduro has accentuated an economic crisis unprecedented in Venezuelan history. This has seriously affected the whole country, where people suffer from starvation while state representatives maneuver to keep themselves in power.

This situation has raised protests —many of them rallied by university students<sup>8</sup>— against the policies and the political program that has caused economic disaster in a context of deep social injustice. Student protests are directed against ideological impositions in universities and against the annulment of the National Assembly (controlled by the opposition) by the Supreme Court (controlled by the government). As protest increases, repression increases with consequent violation of the most essential human rights.

### **3. Student protests and police and military repression**

The Venezuelan constitutional framework recognizes, in accordance with international standards of human rights, the right to protest peacefully. It also regulates the actions of state security authorities, prohibiting the use of firearms and toxic substances in the control of peaceful demonstrations. Security forces are obligated to respect the dignity and human rights of every individual; [...] the use of weapons or toxic substances by police and security officials must be limited by principles of necessity, appropriateness and scale. Despite these Constitutional guarantees, Venezuelan security forces have systematically used indiscriminate and disproportionate [...] force against demonstrators, most of them university students; criminalized student protest; massively practiced arbitrary student detentions, violating due process and contradicting domestic Constitutional Law and International Law.

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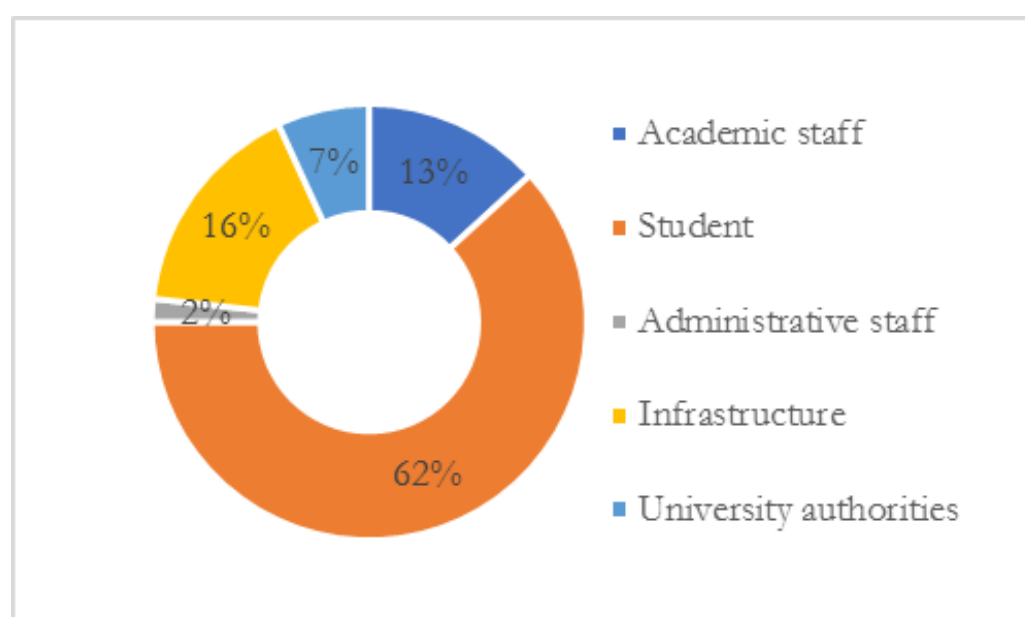
<sup>8</sup> Historically, in Venezuela, students have been traditional actors and always pioneer of protest against the government on duty. Not in vain, they conquered the country's democracy in 1958.

**Table 1 – University Attacks from January 2015 to May 2017**

Item	Number of Victims	%
Academic staff	54	13,24%
Student	252	61,76%
Administrative staff	7	1,72%
Infrastructure	67	16,42%
University authorities	28	6,86%
<b>Total</b>	<b>408</b>	<b>100,00%</b>

Source: Database monitoring Human Rights Observatory of University of Los Andes, and Aula Abierta Venezuela NGO, 2017.

**Figure 1 - Number of attacks from January 2015 to May 2017**



Source: Database monitoring Human Rights Observatory of University of Los Andes, and Aula Abierta Venezuela NGO, 2017.

Despite the constitutional normative provisions mentioned above, which are compatible with respect for human rights in Venezuela, since 2014, an *infra*-constitutional normative framework has been developed both jurisprudentially and through National Executive Power decrees and resolutions. In the first, judgments by the Supreme Court of Justice allow military and security corps to exert protest

control functions resulting in excessive use of force. Special mention should be made of Judgment N° 276 of April 24th, 2014 of the Constitutional Chamber of the Supreme Court of Justice regarding the interpretation of article 68 of the Constitution and articles 41, 43, 44, 46 and 50 of the *Law of Political Parties, Public Meetings and Manifestations* (Constitutional Court Decision 276, 2014)<sup>9</sup>; Resolution N° 008610 of the Ministry of Defense dictating the norms for the intervention of the Bolivarian National Armed Forces in control of public order, social peace, and citizen coexistence at public meetings and demonstrations (Resolution 008610, 2015)<sup>10</sup>; the Zamora Civic-Military Special Strategic Plan<sup>11</sup> and the unconstitutional Declaration of State Emergency in Venezuela<sup>12</sup>.

In Venezuela, police and military forces have repressed student protests with excessive force<sup>13</sup>. The situation has been worsening since 2013, but more dramatically in 2014 and 2017. Repressive actions towards university students have spread throughout the country; arbitrary detentions where students have been phys-

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<sup>9</sup> The Constitutional Court prohibited exercising the right to demonstration without a previous authorization from the Mayor. The Court warned that avoiding such authorization implies a criminal offense; so, citizens were deprived of their freedom to demonstrate. In addition, the Court stated that any public meeting without authorization would allow law enforcement bodies to disperse concentrations using mechanisms they deem most appropriate, including lethal arms.

<sup>10</sup> On February 24, 2015, Kluivert Roa, a 14 years old student, was killed in protests in Táchira State; 15 students were injured in protests for this killing in the University of Los Andes and the Catholic University of Táchira (UCAT). See *Restrictions and Reprisals Against Autonomy and Academic Freedom in Higher Education System in Venezuela*. Contribution for the Second Cycle of Universal Periodic Review of Venezuela, in the 26<sup>th</sup> session of the United Nations Human Rights Council (Human Rights Observatory of the University of Los Andes et al. 2016).

<sup>11</sup> On April 18th, 2017, President Nicolás Maduro ordered the activation of the "Zamora Civic-Military Special Strategic Plan, in its green phase", which is the maximum Plan of Security and Defense of the Nation in case of alleged threats to the internal order that could cause a social and political commotion or a rupture of the institutional order. The implementation of the Plan undermined the exercise of the right to demonstration. (Efecto Cocuyo 2017)

<sup>12</sup> The Decree of State of Exception of May 13th, 2016, confers to the grassroots organizations of the so called "People's Power" attributions so that, together with the police and armed forces, they carry out public order and security functions. This has resulted in massive arrests, accusations of military offenses such as rebellion and the application of military justice to civilians, which has generated great concern in civil society. See (CDH-UCAB 2017; El Nacional 2017; El Nacional 2017b; Panorama 2015)

<sup>13</sup> The State's criminalization and repression of student demonstrations reached alarming levels in 2013, generating protective actions by international human rights bodies. Between February and June 2014, more than 3,000 demonstrators, mostly students from public and private universities in several states who participated in peaceful protests, were arrested preventively and subjected to unfair trials without due process (Human Rights Observatory of University of Los Andes 2015). Available at <http://www.uladdhh.org.ve/index.php/boletines-2/>.



ically attacked and psychologically pressured through interrogations about their alleged “plans to destabilize the government” have increased. Students are labeled as terrorists by government<sup>14</sup>. Repression by the police and the Bolivarian National Guard (GNB), usually working together with illegally armed groups, includes using firearms against civilian protesters and military trespass on autonomous universities<sup>15</sup>.

**Table 2 - Number of attacks classified by type of offender January 2015 - May 2017**

Item	Number of attacks	%
State authorities	173	42,40%
Armed civilians	44	10,78%
SEBIN <sup>16</sup>	6	1,47%
Police	39	9,56%
National Guard	67	16,42%
CICPC <sup>17</sup>	1	0,25%
Common crime	78	19,12%
<b>Total</b>	<b>408</b>	<b>100,00%</b>

*Source: Database monitoring Human Rights Observatory of University of Los Andes, and Aula Abierta Venezuela NGO, 2017.*

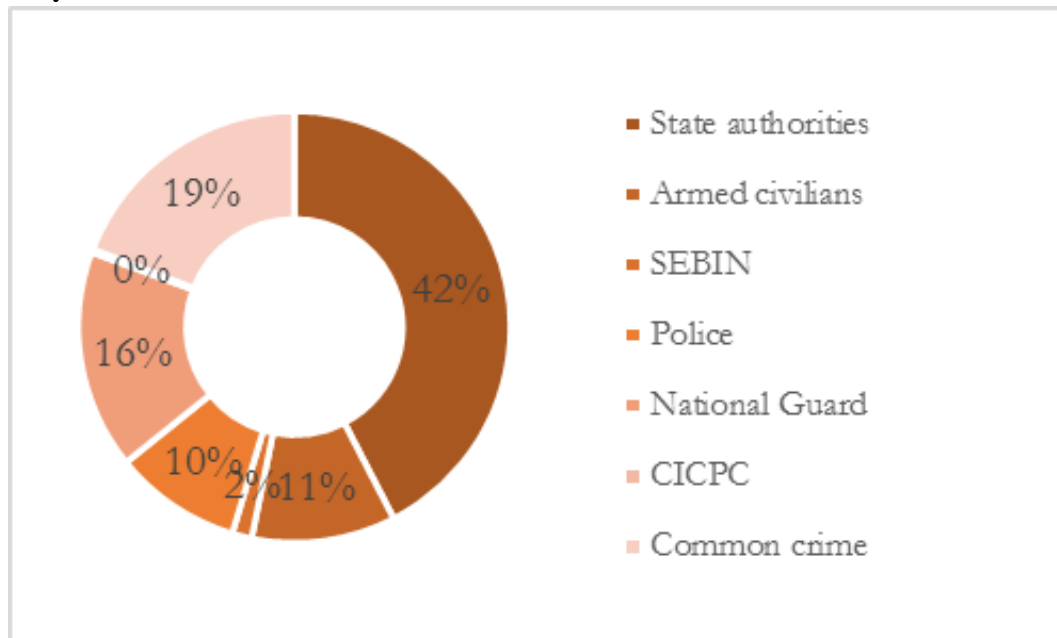
<sup>14</sup> In 2014, more than 200 staff of the University of Los Andes, received subpoenas for their participation in peaceful demonstrations. In 2013 Leonardo León, ULA journalist, was accused of defamation by the state governor Alexis Ramirez. That year, the CICPC's National Bureau of Counter-Terrorism Investigation summoned professors Poleo and Aller, and the engineer Lara, for their public statements about the electrical crisis in the country (Human Rights Observatory of the University of Los Andes et al. 2016).

<sup>15</sup> On February 2017, during a protest at University of Los Andes in Táchira state, a student was injured in his eye by a pellet and fifteen bullet shells of 9 mm were shoot by police officers inside university campuses.

<sup>16</sup> The Venezuelan Bolivarian political police.

<sup>17</sup> Scientific, Penal and Criminal Investigations Office.

**Figure 2 - Number of attacks classified by type of offender, January 2015 - May 2017**



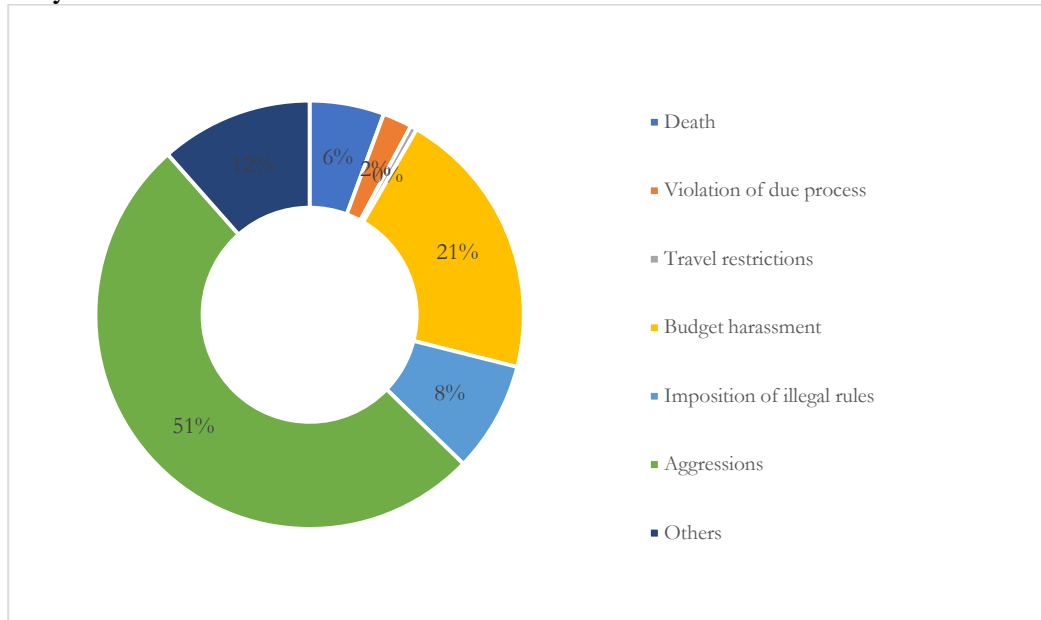
Source: Database monitoring Human Rights Observatory of University of Los Andes, and Aula Abierta Venezuela NGO, 2017.

**Table 3 - Number of incidents classified by kind of attack, January 2015 - May 2017**

Item	Number of attacks	%
Death	23	5,64%
Violation of due process	9	2,21%
Travel restrictions	2	0,49%
Budget harassment	84	20,59%
Imposition of illegal rules	34	8,33%
Aggressions	209	51,23%
Others	47	11,52%
<b>Total</b>	<b>408</b>	<b>100,00%</b>

Source: Database monitoring Human Rights Observatory of University of Los Andes, and Aula Abierta Venezuela NGO, 2017.

**Figure 3 - Number of incidents classified by kind of attack, January 2015 - May 2017**



Source: Database monitoring Human Rights Observatory of University of Los Andes, and Aula Abierta Venezuela NGO, 2017.

International human rights bodies have focused on the human rights situation in Venezuela. In particular, the United Nations Committee against Torture (CAT) on November 2014, and the United Nations Human Rights Committee (CCPR) on June 2015, addressed their general concerns regarding the situation of repression and criminalization of protest in Venezuela. In the last *Universal Periodic Review* on November 2016 (UPR), different countries made recommendations to Venezuela about academic freedom, freedom of expression and university autonomy. This suggests the general concern about the violation of liberties in the country [...] affecting the right to education<sup>18</sup>.

<sup>18</sup> See press release from Aula Abierta, available at <https://goo.gl/Ta8bG9>.

#### 4. New legislation, autonomy and parallel system (2003-2017)

In Venezuela, there are five public national universities<sup>19</sup> and 27 private universities<sup>20</sup> [...] guided by the constitutional principle of university autonomy. There are another forty-seven national universities called “experimental”, the majority created under the Chávez government between 2003 and 2012.<sup>21</sup> Although the Constitution requires *experimental universities* to progress towards the adoption of autonomy, more than thirty-two *experimental* universities do not envision it. The National Executive Power persists in a policy aimed at undermining [...] institutional autonomy in higher education.

Venezuelan law has recognized university autonomy and academic freedom since 1958 and since 1999<sup>22</sup> [...] it is also recognized as a constitutional principle. However, in 2003 President Hugo Chávez decreed the creation of a parallel non-autonomous system of higher education totally subordinated to the State, named *Sucre Mission*<sup>23</sup>. Under this Mission the Bolivarian Venezuelan University, established in several states in spaces called University Villages, was created to serve an expected floating student population. All universities lacking autonomous status were absorbed in this Mission and a *pensée unique*<sup>24</sup> model was implemented for

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<sup>19</sup> UCV, Universidad Central de Venezuela; UCA, Universidad de Carabobo; ULA, Universidad de Los Andes; UDO, Universidad de Oriente; LUZ, Universidad del Zulia; y USB, Universidad Simón Bolívar.

<sup>20</sup> Ministry of People's Power for Higher Education, Science and Technology: Report and Accounts, 2014 and 2015.

<sup>21</sup> Ministry of People's Power for Higher Education, Science and Technology: <https://www.mppeuct.gob.ve/ministerio/ieu>. According to Article 10 of Universities Act (LU), *experimental universities* are created by the National Executive Power in order to experiment new aspects and structures in higher education. In principle, these universities lack autonomy, except for seven of them.

<sup>22</sup> The principle of autonomy and the right to academic freedom are contained in Articles 109 and 102 of the Constitution of the Bolivarian Republic of Venezuela (CRBV), Articles 6, 7 and 9 of the Universities Act (LU), and Article 36 of the Organic Law of Education (LOE 2009). This framework is consistent with Articles 13 and 15 of the International Covenant on Economic, Social and Cultural Rights and UNESCO's Recommendation Concerning the Status of Higher-Education Teaching Personnel.

<sup>23</sup> President Hugo Chávez implemented several social programs called Bolivarian Missions. These programs have been used for proselytism.

<sup>24</sup> *Pensée unique* (single thought): Imposition of an ideology that is proposed as the only and unquestionable truth and a set of ideas as the only valid and justified objective.

proselytism and indoctrination. This model achieved the highest enrollment in the National Experimental Polytechnic University of the National Armed Forces (UNEFA)<sup>25</sup>. According to the National Executive Power, the *Sucre Mission* achieved [...] 83% of national university coverage by 2013. This is among the highest in the world, but there are not enough official data to verify registration, or indicators of permanence, desertion and academic performance.

The imposition of government guidelines on universities in Venezuela continued in 2008, when President Hugo Chávez decreed the creation of the *National Programs for Higher Education*. They were made up of different [...] university programs conceived under the direct supervision of the Ministry for University Education to fulfill the Simon Bolívar National Project<sup>26</sup>—the first government socialist Plan directed towards strengthening the so called Bolivarian socialist revolutionary process—for implementing the Bolivarian socialist dogma in the higher education system<sup>27</sup>.

On 2009, another mission taking over higher education was created, called “*Alma Mater Mission* for a Bolivarian and Socialist University Education”. It was decreed by President Hugo Chávez to promote the transformation of university education according to the guidelines of the Simon Bolívar National Project. The Ministry of Popular Power for University Education was appointed as the governing body for the implementation, coordination and development of the *Alma Mater Mission*, conceived as a project to collaborate with the *Sucre Mission*.

In 2009, a new *Law on Education* was enacted with articles that violated university autonomy and academic freedom. It was derived from a draft reform of the

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<sup>25</sup> Mission Sucre rests primarily on two emblematic universities: the Bolivarian University of Venezuela (UBV), created in 2003 to include the pending floating student population, extended to several states in spaces called University Villages; and UNEFA, a military university has had a considerable expansion, from an enrollment of 3,000 registered in 2003 to over 200,000 in 61 sites nationwide, also as part of a strategic Civic-Military alliance.

<sup>26</sup> The First Socialist Plan for the Economic and Social Development of the Nation 2007-2013 oriented towards the construction of the “XXI century Socialism”. See full document in Presidential Office (2007).

<sup>27</sup> See the National Training Programs at Resolution N° 2.963 of Ministry of Higher Education (Resolución N° 2.963, 2008).

Organic Law on Higher Education (PLEU)<sup>28</sup> approved by the National Assembly (AN) in December 2010 but vetoed by the President in January 2011. Despite this and various appeals filed by the universities before the Supreme Court (TSJ) requesting the annulment of the said articles (not resolved to date), they still apply to all universities<sup>29</sup>.

The new law of education created the *Estado Docente*<sup>30</sup>, assigning to the National Executive Power control over [...] university rules and policies of government, income, and teacher training. Article 34 of the law states that university autonomy must be interpreted (a) in academia, as the subordination of training programs and research to the plans of the National Executive Power and the priority needs of the country; (b) at the administrative and self-government level, as the obligation to include the administrative staff and workers in the election of university authorities and student representatives; and (c) in the economic sphere, as centralized State control over the investment and expenditure of universities. According to article 34, the principle of academic autonomy must be interpreted, within the scope of the educational function, as subject to the plans of the Executive and the priority needs of the country, in interaction with the communities. Administrative autonomy must be interpreted as the obligation to include administrative and worker personnel, and alumni, as voters with equal rights with teachers and students; and financial autonomy must be interpreted as external control and oversight by the State. The article 34 of the LOE follows the Reform Project of the Organic Law of University Education (PLEU), presented in December 2010 by deputies of the National Assembly and vetoed by the National Executive Power in January 2011. In the PLEU, all universities had to adapt the autonomous nature of their academic, political and administrative norms to state purposes, in order to consolidate a model: a socialist university, one way of thinking, and absolute control by the *Estado Docente*. Despite

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<sup>28</sup> See PLEU available at <https://goo.gl/T9Uv9i>.

<sup>29</sup> The report of the Directorate of Legal Council of the UCV demonstrates the unconstitutionality of the LOE, see: <https://goo.gl/HCUw06>.

<sup>30</sup> Through the figure of *Estado Docente* (Teaching State), the state regulates, monitors and controls the entire educational activity at all levels of public and private education under sectarian principles.

its veto, the Ministry of Higher Education (MES), through the Vice-Presidency of Planning and Knowledge, has issued a set of resolutions and decrees that apply the PLEU in practice. Similarly, the formulation of articles 37 and 38 of the LOE violates academic autonomy by assigning the design and control of training policies and programs for university teachers to the executive power. The so-called System of Continuing Education of University Professors, issued by the MES in June 2015, which is applicable to all universities in the country, is based on these articles.

The functions attributed to the *Estado Docente*, stated in articles 6.2.b, 6.3.k and 6.3.l of the Law of Education, undermine [...] academic, administrative, and financial autonomy by assigning the control of the norms of government, the entrance policies and the educational training programs of the universities to the National Executive Power, in order to adapt them to ideological ends contrary to an education free and open to all [...] currents of thought.

The 2013-2017 Second Socialist Plan of the Nation envisions the transformation of the universities needed to link it to the objectives of the national project. In essence, it consists in deepening and radicalizing the Bolivarian revolution in order to impose [...] so-called Bolivarian socialism. Article 1.5.1 of this political program states that scientific research must be at the service of the construction of the Socialist Model of Production and the strengthening of Socialist Ethics, thus contravening the principles of university autonomy and the right to academic freedom and the free development of [...] personality.

In order to implement the Socialist Plan for higher education and achieve its goals within “*the greatest political efficiency and revolutionary quality in the construction of socialism*”, in 2014 the National Executive Power transformed the executive body of higher education into the Ministry of Popular Power for Higher Education, Science and Technology,<sup>31</sup> with three vice-ministries<sup>32</sup>, whose responsibilities empower them to issue decrees without consultation regarding policies, plans, and training programs, student admissions, and research priorities in higher education. This

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<sup>31</sup> Decree N° 1.226, of September 3, 2014. Available at: <https://goo.gl/dzCMUW>.

<sup>32</sup> The deputy ministers are: a) of university education, b) of research and application of knowledge and, c) of institutional strengthening, connectivity and knowledge exchange.

usurps functions that, as part of their autonomy, belong to universities<sup>33</sup>.

On November 03, 2015, the majority of former National Assembly members, controlled by the government party, passed an *Agreement* requesting a takeover of the universities. Twenty-two national human rights organizations, the Association of Rectors of the Autonomous Universities, the Federation of Associations of University Teachers, the Federation of Venezuelan Student Centers and the unions of university workers rejected it categorically as interference in university autonomy and a violation of the right to academic freedom and labor rights. The National Assembly Agreement accused universities of being “abducted by forces of different signs” (i.e. tendencies not aligned to the national government), of “generating processes of insubordination to the law” and of “supporting unconstitutional and violent solutions against the democratically elected government”<sup>34</sup>. The *Agreement* criminalized the legitimate struggles of the university associations by pointing out that they constituted “a policy of the Venezuelan opposition”<sup>35</sup>.

## **5. Discrimination towards professors and students**

### *5.1. Prohibition of discrimination in the field of higher education*

The legal framework of academic freedom and university autonomy is compatible with the general principle of non-discrimination in the higher educational system. In Venezuela, the National Constitution preserves, in Article 21, the general principle of equality before the law and non-discrimination. Therefore, academic freedom and university autonomy (Constitutional Articles 102 and 109 and Articles 6, 7 and 9 of University Law) should be interpreted according to the general

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<sup>33</sup> Juan Carlos Delgado, former Vice Chancellor of Trujillo campus of the University of Los Andes stated: ‘...Higher Education subsystem is governed by means of decrees, obviating the current Universities Act (...) Ministry of People's Power for Higher Education, Science and Technology, governed by the Organic Law of Education, bases its relationship with universities from the perspective of the *Estado Docente* centralizing, in an overwhelming and interventionist way, decisions and programs previously taken by institutions of higher education autonomously and independently (Delgado 2013).

<sup>34</sup> From this perspective, the revolutionaries, in a stroke, turn the autonomous universities into agents of imperialism and trainers of fascist righters, which deserve bombs and bonfires. (Ugalde 2017).

<sup>35</sup> University Centers and Human Rights Organizations speak on the *Agreement*. (Human Rights Observatory of the University of Los Andes 2015).



understanding of non-discrimination. Academic freedom, in the broadest sense, comprises the statutory principle of autonomy and the right of every person to participate in the higher education system, in which all currents of thought are respected and full development of the personality is allowed without subjection to prescribed doctrines<sup>36</sup>. In this context, academic freedom implies the freedom to express critical opinions about the institution or the system of which the individual is a part, without suffering any discrimination or repression from the government or any other institution<sup>37</sup>. This requires that institutions of higher education guarantee students free expression of their opinions about any national or international issue<sup>38</sup>.

Higher education institutions must [...] ensure equitable and fair treatment to all students, without discrimination<sup>39</sup>, in accordance with Article 21 of the Convention against Discrimination in Education, which defines discrimination as: “(...) any distinction, exclusion, limitation or preference which, being based on (...) political or other opinion (...) has the purpose or effect of nullifying or impairing equality of treatment in education (...)”. In this context, governments are obliged to repeal all administrative provisions and practices involving discrimination in the framework of education<sup>40</sup>.

### *5.2. Main concerns regarding political discrimination towards professors and students in Venezuela*

Discrimination in higher education has increased in Venezuela. Between June and July 2016, 896 students of Zulia State were excluded from the government's Jesus Enrique Lossada<sup>41</sup> scholarship program, after collecting signatures in favor of [...] the recall referendum against President Nicolás Maduro. Although the

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<sup>36</sup> Recommendation Concerning the Status of Teaching Personnel in Higher Education. (UNESCO 1997).

<sup>37</sup> Idem.

<sup>38</sup> Lima Declaration on Academic Freedom and Autonomy of Institutions of Higher Education.

<sup>39</sup> Recommendation concerning the Status of Teaching Personnel in Higher Education. (UNESCO 1997).

<sup>40</sup> Article 3 of the Convention Against Discrimination in Education.

<sup>41</sup> See Aula Abierta Venezuela, Preliminary Report. Available at: <https://goo.gl/ByHJHY>.

scholarships were given back under *certain* conditions<sup>42</sup> and Zulia's government apparently rectified the decision, the message of political intolerance had already been sent.



*Exhibition at the Experimental University of Security UNES that is part of the Alma Mater Mission. Students are obliged to paint and sculpt Hugo Chávez images for exhibiting them in University main hall.*

Discrimination towards students and university professors has increased in Venezuela, both in autonomous and non-autonomous universities<sup>43</sup>. There is a general pattern of political discrimination in universities subjected to the Executive Power. Professors and students from Bolivarian universities must submit to the Bolivarian revolutionary credo under threat of being expelled.<sup>44</sup> Offices and classrooms in university buildings are filled with political propaganda and slogans of the type: 'Educating for Socialism'; 'Our homeland, Venezuela, needs patriots, we have had enough betrayers', thus promoting sectarianism and intolerance towards critical

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<sup>42</sup>The students to be reinstated were obliged to sign a *letter of commitment* in which they accepted, among other things, to participate in proselytizing activities required by the government prohibiting them to participate in protest.

<sup>43</sup> See *Restrictions and Reprisals Against Autonomy and Academic Freedom in Higher Education System in Venezuela*: Contribution for the Second Cycle of Universal Periodic Review of Venezuela, in the 26<sup>th</sup> session of the United Nations Human Rights Council (Human Rights Observatory of the University of Los Andes et al. 2016).

<sup>44</sup> According to former Bolivarian University professor Dr. Gabriel Andrade: There is no possibility in this university to publicly make a comment in favor of Adam Smith, or against Simon Bolívar; the teacher who does it, runs the risk of being expelled. A student wearing a t-shirt representing a political party opposed to the government would not be allowed to enter the university even though there are plenty of students wearing t-shirts representing the ruling party (Andrade 2012).

thinking and considering students and professors who exercise their freedom of expression as the enemy.

Students from the Bolivarian University and the National Experimental Army University are subjected to discrimination and repression for expressing their dissent on political issues. The cases of Leonardo Isaac Lugo<sup>45</sup> and Rafael Avendaño are representative<sup>46</sup>.

Discrimination towards university professors has increased in Venezuela as well. On February 2017, Santiago Guevara, a professor from the Carabobo University, was detained under the charge of treason, causing serious concerns in the Venezuelan and international community<sup>47</sup>. He is well known from his press articles criticizing economic policies in Venezuela. The NGO Scholar at Risk (SAR) stated: “Professor Guevara, a 65-year-old economist who has taught at the University of Carabobo’s Faculty of Economical and Social Sciences for 42 years, has led economic development projects in Venezuela and has frequently commented in the media on the current administration’s economic policies (...) On February 21<sup>st</sup>, 2017, officers from the Directorate of Military Counterintelligence (DGCIM) reportedly visited Professor Guevara at his home in Valencia, where they served him with a summons instructing him to report to the DGCIM. Professor Guevara did so voluntarily later that evening, and was taken into custody. On February 23, he was reportedly brought before a military court and charged with “treason,” “incite-

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<sup>45</sup> Leonardo Isaac Lugo was a student of the National Polytechnic Experimental University of the Bolivarian National Armed Forces – UNEFA, in Falcón State. On October 2016 the UNEFA authorities considered a serious misconduct and a challenging attitude the fact that Isaac Lugo wore a bracelet with Henrique Capriles name in it, a political opposition leader and former presidential candidate.

<sup>46</sup> Rafael Avendaño was a medicine student at the Bolivarian University of Venezuela in Mérida State. The 3<sup>rd</sup> of November 2016 he was expelled from the University on the basis of a report prepared by the coordination office. The reasons to expel him were: a) to have expressed his disagreement with the Bolivarian Revolution b) to have turned on a non-official TV channel.

<sup>47</sup> Regarding international actions addressed to international human rights bodies, the NGO, Aula Abierta Venezuela, the Human Rights Observatory of University of Los Andes, the Human Rights Commission of University of Zulia, the Center for Peace and Human Rights of Central University of Venezuela, the Venezuelan Association of Constitutional Law, among others, issued a request before the Inter-American Commission on Human Rights, regarding the situation of professor Guevara and the situation of academic freedom and university autonomy in Venezuela. Reports available at: <https://goo.gl/cO2mWP>, <https://goo.gl/gtKjGC>, <https://goo.gl/3lhcfH>, <https://goo.gl/1v3wmW>, <https://goo.gl/d7ecT3>.

ment to rebellion”, and crimes against the “security and independence of the nation.” While the evidentiary basis for the charges has not been disclosed, Professor Guevara’s colleagues allege that his arrest was a response to his recent publications. DGCIM officers have questioned him specifically about his articles commenting on economic conditions and political unrest in Venezuela” (Scholars at Risk, 2017). Confinement conditions in DGCIM are not compatible with the UN Standard Minimum Rules for the Treatment of Prisoners<sup>48</sup>. Furthermore, professor Guevara’s health has been compromised, as various organizations have reported<sup>49</sup>.

The prosecution and detention of Professor Guevara by the military jurisdiction underlines a main concern regarding the situation of civilians in Venezuela under prosecution by military authorities. This violates the human rights standards issued by the United Nations and the Inter-American Systems, as well as Venezuelan Constitutional and Criminal Law.

Santiago Guevara was brought to trial before a military court violating the principle of the natural judge, which establishes the principles of human right to due process stated in Article 49.4 of the Venezuelan Political Constitution and Article 7 of the Criminal Procedure Code. Furthermore, Article 261 of the National Constitution establishes that “military criminal jurisdiction is an integral part of the Judicial Power (...). Its sphere of competence, organization and modes of operation shall be governed by the accusatory system in accordance with the Organic Code of Military Justice. Ordinary jurisdiction courts must judge common crimes. Military courts' jurisdiction is limited to offenses of a military nature (...)”. In addition, trying Professor Guevara under military jurisdiction contradicts the opinion of the Criminal Chamber of the Supreme Court of Justice of February 2, 2001, according to which

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<sup>48</sup> Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977. See The United Nations Standards Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) available at <https://goo.gl/PovCQQ>.

<sup>49</sup> Professor Guevara suffers from a very delicate medical condition: hypertension, irritable bowel and ankylosing spondylitis, a chronic autoimmune disease that produces pain and a gradual hardening of the joints. His is not allowed to receive sunlight nor a diet adapted to his health condition. See Aula Abierta Venezuela Preliminary report, available at <https://goo.gl/KXFQmP>.

civilians can never be tried by military tribunals or be subjected to military jurisdiction. It is remarkable that the UN Human Rights Committee and the Inter-American Court of Human Rights doctrine have expressed their doubts regarding the independence and impartiality of military courts, saying that they do not provide strict guarantees for the proper administration of justice. The Working Group on Arbitrary Detention stated, in 1999, that if any form of military justice were to exist, it should declare itself incompetent to judge civilians, as the military has acted arbitrarily in many countries [...].

There are a couple of aspects that characterize military justice in Venezuela: 1. Prosecutors in military jurisdiction are elected by the President of the Republic and must be active officers of the armed forces. In an ordinary procedure, the Public Prosecutor is autonomous and independent of the other bodies of the State. 2. Military justice empowers the President of the Republic and the Minister of Defense to organize and elect military judges. The Judicial Branch and its organization are subject to Article 255 of the Constitution<sup>50</sup> on ordinary jurisdiction. 3. Absolutory decisions must be taken in consultation with hierarchical superiors, which completely impedes the independence of judges.<sup>51</sup>

Therefore, the intervention of the Executive Power in military justice completely violates due process for any civilian or military individual accused of being a traitor to the homeland, branding them as a political enemy, curtailing their fundamental rights. Obviously, the interference of the executive in the determinations of military tribunals precludes the application of impartial justice.<sup>52</sup>

## **6. Conclusions**

Since 2003, in Venezuela, a process of progressive restriction of university autonomy and academic freedom has begun. On the one hand, a parallel system of universities subject to the government has been created, and on the other, laws and

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<sup>50</sup> See Article 255 of the Constitution of the Bolivarian Republic of Venezuela.

<sup>51</sup> See Aula Abierta Venezuela Preliminary Report. Available at <https://goo.gl/KXFQmP>.

<sup>52</sup> Limiting the judicial guarantees contemplated in Article 49 of the Constitution and in the Universal Declaration of Human Rights, Articles 10 and 11 respectively.

decrees that usurp university functions have been imposed. This policy is accentuated in the Second Socialist Plan of the Nation which envisions the radical transformation of the universities in order to place them at the service of the Bolivarian revolution. As a consequence, and while social and economic conditions deteriorate, critical voices from university students are repressed through excessive use of force during student protests, teachers and students are arbitrarily arrested, and civilians are subjected to military justice. At this time, the government of Nicolás Maduro is proposing a Constituent Assembly to formulate a new Constitution that most probably would end up eliminating what still remains of democracy in Venezuela. That, applied to universities, would imply the suppression of autonomy in all universities. We hope this could be avoided.

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